

**Introduced by Senator Stone**

February 19, 2016

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An act to amend Section 1780 of the Civil Code, relating to consumer remedies.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1306, as introduced, Stone. Consumer remedies: attorney's fees and litigation costs: prevailing party.

Existing law, the Consumer Legal Remedies Act, authorizes a consumer who suffers damage from the use of unfair methods of competition and unfair or deceptive acts, as defined, to bring an action to recover damages or other relief. Existing law requires a court to award court costs and attorney's fees to the prevailing plaintiff in an action brought pursuant to those provisions. Existing law also permits a court to award reasonable attorney's fees to a prevailing defendant only if the court finds that the plaintiff's prosecution of the action was not in good faith.

This bill would revise those provisions to instead require a court to award court costs and attorney's fees to the prevailing party in the action.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1780 of the Civil Code is amended to
- 2 read:
- 3 1780. (a) Any consumer who suffers any damage as a result
- 4 of the use or employment by any person of a method, act, or

1 practice declared to be unlawful by Section 1770 may bring an  
2 action against that person to recover or obtain any of the following:

3 (1) Actual damages, but in no case shall the total award of  
4 damages in a class action be less than one thousand dollars  
5 (\$1,000).

6 (2) An order enjoining the methods, acts, or practices.

7 (3) Restitution of property.

8 (4) Punitive damages.

9 (5) Any other relief that the court deems proper.

10 (b) (1) Any consumer who is a senior citizen or a disabled  
11 person, as defined in subdivisions (f) and (g) of Section 1761, as  
12 part of an action under subdivision (a), may seek and be awarded,  
13 in addition to the remedies specified therein, up to five thousand  
14 dollars (\$5,000) where the trier of fact does all of the following:

15 (A) Finds that the consumer has suffered substantial physical,  
16 emotional, or economic damage resulting from the defendant's  
17 conduct.

18 (B) Makes an affirmative finding in regard to one or more of  
19 the factors set forth in subdivision (b) of Section 3345.

20 (C) Finds that an additional award is appropriate.

21 (2) Judgment in a class action by senior citizens or disabled  
22 persons under Section 1781 may award each class member that  
23 additional award if the trier of fact has made the foregoing findings.

24 (c) Whenever it is proven by a preponderance of the evidence  
25 that a defendant has engaged in conduct in violation of paragraph  
26 (24) of subdivision (a) of Section 1770, in addition to all other  
27 remedies otherwise provided in this section, the court shall award  
28 treble actual damages to the plaintiff. This subdivision shall not  
29 apply to attorneys licensed to practice law in California, who are  
30 subject to the California Rules of Professional Conduct and to the  
31 mandatory fee arbitration provisions of Article 13 (commencing  
32 with Section 6200) of Chapter 4 of Division 3 of the Business and  
33 Professions Code, when the fees charged or received are for  
34 providing representation in administrative agency appeal  
35 proceedings or court proceedings for purposes of procuring,  
36 maintaining, or securing public social services on behalf of a person  
37 or group of persons.

38 (d) An action under subdivision (a) or (b) may be commenced  
39 in the county in which the person against whom it is brought  
40 resides, has his or her principal place of business, or is doing

1 business, or in the county where the transaction or any substantial  
2 portion thereof occurred.

3 In any action subject to this section, concurrently with the filing  
4 of the complaint, the plaintiff shall file an affidavit stating facts  
5 showing that the action has been commenced in a county described  
6 in this section as a proper place for the trial of the action. If a  
7 plaintiff fails to file the affidavit required by this section, the court  
8 shall, upon its own motion or upon motion of any party, dismiss  
9 the action without prejudice.

10 (e) The court shall award court costs and attorney's fees to a  
11 prevailing ~~plaintiff~~ *party* in litigation filed pursuant to this section.  
12 ~~Reasonable attorney's fees may be awarded to a prevailing~~  
13 ~~defendant upon a finding by the court that the plaintiff's~~  
14 ~~prosecution of the action was not in good faith.~~